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U.S. Department of State

Spain Country Report on Human Rights Practices for 1997

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SPAIN

Spain is a democracy with a constitutional monarch. The Parliament consists of two chambers, the Congress of Deputies and the Senate. President Jose Maria Aznar of the Popular Party (PP) was elected in 1996. The Government respects the constitutional provisions for an independent judiciary in practice.

Spain has three levels of security forces. The National Police are responsible for nationwide investigations, security in urban areas, traffic control, and hostage rescue. The Civil Guard polices rural areas and controls borders and highways. Autonomous police forces have taken over many of the duties of the Civil Guard in Galicia, Catalonia, and the Basque country. The security forces are under the effective control of the Government. The security forces also maintain anticorruption units. An adviser for human rights in the Ministry of Justice is charged with promoting humanitarian law and training senior law enforcement groups in human rights practices. Some members of the security forces committed human rights abuses.

The economy is market based, with primary reliance on private initiative, although a number of public sector enterprises remain in key areas. The economy grew by 3.4 percent in 1997. The nominal unemployment rate dropped from the 1996 high of 21.9 percent to 21 percent in 1997.

The Government generally respected the human rights of its citizens. However, there were problems in some areas, including police brutality, lengthy pretrial detention, and an inefficient judicial system. An Ombudsman, called the "People's Defender" in the Constitution, serves as an independent advocate for citizen's rights. Societal violence against women, discrimination against Roma, and incidents of racism

and rightwing youth violence are also problems. The Government investigates allegations of human rights abuses by the security forces and punishes those found guilty, although investigations are often lengthy and punishments can be light.

Continued allegations surfaced of involvement by the previous Gonzalez administration in "Antiterrorist Liberation Groups" (GAL), which murdered 27 people between 1983 and 1987. This secret organization was reportedly composed of security officers and contract gunmen with links to organized crime. It is believed to have had links to the highest ministerial levels, including a former Minister of the Interior, the commanding officer of the security forces, and the most senior government representative in the Basque region. Judicial investigations into these allegations proceeded throughout the year but did not turn up any significant new evidence. These investigations could lead to trials of former senior officials on GAL-related charges.

The principal source of abuses continued to be the protracted campaign of terrorism waged by the Basque Fatherland and Freedom (ETA) terrorist group, which committed killings, kidnappings, and other abuses.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Political and Other Extrajudicial Killing

There were no reports of political or other extrajudicial killings by government forces. However, several deaths under suspicious circumstances occurred.

In March an officer from the Civil Guard was detained after fatally shooting a young Moroccan boy in the back. The boy's girlfriend claimed that they were asked what was wrong by the officer while they paused for him to tie his shoe. He responded "nothing," and three shots were fired as they turned to walk away, according to the girl. The boy's parents and the Association of Moroccan Immigrants in Spain allege that his death was racially motivated. The Civil Guard denies these accusations.

ETA member Jose Maria Aranzamendi died in Madrid's Acala-Mco prison, where he was being held in preventive custody, on February 7. Aranzamendi was found hanged in his cell. Prison officials failed to report that Aanzamendi had both his feet and hands bound. This generated skepticism as to the cause of his death and led some observers to blame prison officials. The official autopsy listed the cause of death as suicide, and no charges were filed.

Eugenio Aranburu, a member of the national committee of Herri Batasuna (HB), the political wing of ETA, committed suicide on February 10, the same day that he was to have appeared in court for questioning in connection with an ETA video that HB used for propaganda purposes during the 1996 general election campaign. Aranburu, like the other HB national committee members, announced that he would not answer the summons to appear in court for questioning over the video. He was found hanged in the country home of his brother (in Mallabia, Vizcaya). Aranburu's brother and friends said after his death that he was not suffering from depression or nervousness, including in regard to his forthcoming imprisonment (for refusing to appear for questioning over the video). In an interview in a Basque news magazine published shortly before his death, Aranburu said that he expected to be imprisoned (by the Supreme Court) and that he believed that only punishment and beatings awaited him in prison. Nevertheless, he said that he was not worried about his forthcoming imprisonment. The HB national committee members were imprisoned for failing to answer summonses to appear before the Supreme

Court to discuss the election video. Initially, they had refused to pay bail but did so after it was reduced, and all were released early in the year.

On March 27 the body of Josu Zabala Salegi, a member of ETA, was found in the countryside in Guipuzcoa province. The body had a bullet wound in the chest, and a 9mm pistol was found next to the body. Police pursued Zabala for more than 2 years in connection with a series of ETA attacks. Zabala was wanted by the National High Court, which had ordered his arrest. An anonymous call to a pro-ETA newspaper said that Zabala was missing since March 23.

In 1997 plaintiffs appealed the 1996 acquittal of two Civil Guard members in the case of the torture and murder of a detainee in 1994 (see Section 1.c.).

Courts continue to investigate the "dirty war" against terrorism, during which GAL allegedly was responsible for bombings, extrajudicial killings, and kidnappings during the mid-1980's. No former senior officials have been tried yet, but investigations into specific instances of murder and kidnapping could lead to eventual trials of such individuals.

Former Interior Minister Jose Barrionuevo and former Secretary of State for Security Rafael Vera, indicted in 1996 for kidnapping and other charges in the 1983 case of Segundo Marey and the "dirty war" against ETA, were ordered to stand trial although their trials had not yet begun by year's end.

Virtually no progress was registered in resolving the mid-1980's cases of killings by the security forces of Roman Onaederra, Mikel Zabaltza, Robert Caplanne, and a tramp and two drug addicts.

ETA continued to commit human right abuses, including deliberate and arbitrary killings and hostage taking. As of December, ETA was held responsible for 13 deaths during the year, a significant increase from 1996 during which 5 people were killed. According to the Minister of the Interior, ETA forces have killed 763 persons since 1968. The Attorney General reported that groups supporting ETA carried out 830 acts of sabotage, numerous disturbances, and attacks on persons, property, political parties, and security forces in 1995, a 300 percent increase since 1994 (latest available statistics).

On January 8, two ETA gunmen shot and killed army Lieutenant Colonel Jesus Cuesta Abril in front of his house in Madrid. On January 30, ETA gunmen shot and killed Eugenio Olaziregi Borda, a bicycle salesman in San Sebastian. Olaziregi worked in a shop in Oiartzun where ETA terrorist Valentin Lasarte bought two bicycles before he was arrested in March 1996 (Lasarte was sentenced to a lengthy prison term). Olaziregi's killing was apparently based on the supposition that he had turned Lasarte in and served as a warning against public cooperation in the fight against ETA. On February 10, ETA gunmen shot and killed Supreme Court judge Rafael Martinez Emperador in Madrid. The same day ETA set off a car bomb in Granada targeted at a passing air force van; the bomb killed Domingo Puente, a civilian employee of Armilla air base, and its explosion wounded eight others. On February 11, ETA gunmen shot and killed Francisco Arratibel, a Basque businessman, in Tolosa, Guipuzcoa. ETA had accused Arratibel of having kept \$450,000 (60 million pesetas) of the ransom obtained for the release of ETA victim Emiliano Revilla, who was kidnaped in 1988. Arratibel, who was sentenced to 2 years in prison in 1994 for his intermediary role, escaped a previous ETA attempt on his life in 1978 (a result of his father's refusal to pay ETA's revolutionary tax). On February 17, an ETA car bomb killed Modesto Rico, a national policeman, in Bilbao. On March 11, ETA forces shot and killed Javier Elosegui, an employee of the Martutene prison in San Sebastian. On April 24, ETA shot and killed National Police Inspector Luis Andres Samperio Sanudo in Bilbao. On May 5, ETA members shot and killed Civil Guard member Jose Manuel Garcia Fernandez in a bar in Zierbana in Vizcaya province.

On July 10, ETA forces kidnaped Miguel Angel Blanco Garrido, a councilman of the Popular Party in the town of Ermua in Vizcaya, and issued an ultimatum to the Government that it would kill Blanco if the Government did not bring all ETA prisoners back to the Basque country within 48 hours. On July 12, ETA carried out its threat and killed Blanco. He was found with two shots to the head and his hands and feet bound in a wooded area near Lasarte in Guipuzcoa. His death in a hospital on July 13 triggered an unprecedented level of national and international criticism of ETA. Mass demonstrations took place throughout Spain, with a march of an estimated 1.5 million people in Madrid, 1 million in Barcelona, and several hundred thousand people in other provinces.

On September 6, ETA set off a car bomb in the Basque city of Basauri, killing National Police officer Daniel Villar Enciso. The 39-year-old officer was on his way to work when the explosion went off. The death of Villar also resulted in demonstrations throughout many major cities and a funeral attendance of over 2,000 people, including the Minister of Interior. On October 15, Ertzaintza (Basque police) agent Xtema Aguirre died after being shot on October 14 by one of three ETA terrorists preparing an attack on the new Guggenheim museum in Bilbao. Aguirre was shot when he demanded identification from the men after he verified that the license plate numbers on the truck they were driving were false. The men had planted 12 grenades in launcher tubes in a garden of the museum with the intention of setting them off during its inauguration in the presence of top government and private sector figures, including King Juan Carlos.

Following the announcement of the sentence of 23 HB National Committee members on December 2, Floren Aoiz, one of the convicted committee members, warned that the sentence "would bring consequences and they would be serious consequences." Four days later, there was an attempt on the life of a PP town councilwoman in the Basque region, Elena Azpiroz; ETA subsequently took credit for the attack. One of her bodyguards was injured in the altercation. On December 11, 64-year-old PP councilor Jose Luis Caso was fatally shot in the head in a bar in Irun in the Basque region.

Police officials and the press continue to report an increase in ETA youth criminal activity, including the continued use of Molotov cocktails to set fire to homes, businesses, cars, and political party offices in a continuing campaign of intimidation. During the year, damage by Jarrai, the very active youth wing of ETA, was expected to surpass millions of dollars. On December 22, an ETA youth commando exploded a homemade bomb in the residence of Carmen Gurruchaga, a journalist for El Mundo, one of the most popular daily newspapers. The incident happened the same day that Gurruchaga published an article in El Mundo revealing the possible presence in Cuba of Mikel Otegi, an accused murderer in hiding from Spanish justice. Although no one was injured in the explosion, the bomb contained enough explosives to have killed Gurruchaga and her two children, who were also inside the home at the time of the explosion.

The Government utilized special antiterrorist legislation in its efforts to combat ETA. It continued its counterterrorism efforts and sought tougher extradition rules from countries outside Europe where ETA terrorists reside.

In June the French judicial system sentenced 3 members of ETA's "comando itinerante" to life imprisonment and 3 others to 16 years' imprisonment for their participation in 21 terrorist actions between 1978 and 1989, which resulted in 38 deaths and dozens of injuries. This marked the first time that ETA members were tried in France for crimes committed in Spain, although many ETA members have been tried in France for violating French law. France and Spain continue to cooperate to extradite ETA criminals, primarily from France to Spain.

There are several organizations dedicated to the needs and concerns of victims of terrorism, among them the Association of Terrorism Victims (AVT). This organization was founded in 1981 and currently

serves 1,400 families by providing legal and psychological counseling, publishing a monthly magazine, and carrying out other activities. Government funding is limited to \$41,000 annually provided by the Ministry of Defense. In 1996 the Association donated \$880,000 to aid victims.

Some victims of ETA crimes complain that the Government has ignored them or moved too slowly in compensating them for their losses. In June the AVT held a press conference to commemorate the 10th anniversary of ETA's bloodiest terrorist action, an attack in a Barcelona shopping center that resulted in 21 deaths. In 1996 the Supreme Court found the police negligent for not evacuating shoppers despite a warning from ETA 1 hour before the explosion. The Court ordered the Government to pay a total of \$300,000 to the victims. Alvaro Cabrerizo, who lost his wife and both children in the attack, is the only person to date who has been compensated. Thirty-one families have cases pending. The AVT press conference provided an opportunity for victims to criticize the Government for not carrying out its promise of compensation.

On December 2, the Supreme Court sentenced 23 members of the National Committee of HB to 7 years in prison each for violation of a law prohibiting collaboration with an armed band. All 23 were fined \$3,500 (500,000 pesetas). The charge was based on the Committee's decision to distribute a video made by ETA during HB's 1996 election campaign. In the video, masked ETA members with guns on the table in front of them proposed negotiating Basque self-determination with the Government. Mainstream Basque (not Spanish) political leaders charge that the sentences were politically motivated and the result of pressure by the Government on the Court to convict.

Argentine naval officer Adolfo Scilingo has been in prison since October 10, when he presented himself to National High Court judge Baltazar Garzon and offered his cooperation in the investigation of the disappearance of 600 Spaniards in Argentina during the Dirty War conducted by the dictatorship there between 1976 and 1983. On December 30 Garzon issued charges against another 36 Argentine military and police officials, whose names were provided by Scilingo. They join hundreds already charged. The Chief Prosecutor of the National High Court, Eduardo Fungairino, and the Attorney General, Jesus Cardenal, both expressed the opinion late in the year that the Court did not have jurisdiction in the cases brought by judges Garzon and Manual Garcia Castellon, who heads a similar case involving the disappearance of Spaniards in Chile. The Socialist Party called for the Government to fire both Fungairino and Cardenal for their stance in the cases.

b. Disappearance

Since 1970 ETA has kidnaped 76 people. It is estimated that ETA has obtained more than \$33 million from the kidnappings. Since 1982 only five hostages were set free due to successful police intervention; nine were killed during the process of negotiation.

On July 1, the Civil Guard located and rescued Jose Antonio Ortega Lara, a prison official from Burgos kidnaped by ETA on January 17, 1996. Ortega Lara spent a total of 532 days in captivity, making him the longest serving ETA hostage. ETA had conditioned Ortega Lara's release on a reversal of the Government's policy of dispersal of the approximately 500 ETA prisoners throughout Spain. In return for Ortega Lara's release, ETA called on the authorities to abandon what it defined as their strategy of repression of Basque prisoners, saying that in return it would be prepared to make an "equivalent gesture." ETA stated that if the Government complied with its demand, prison officers would cease to be the object of its actions. Following Ortega Lara's release, the authorities learned that the terrorists who were holding Ortega Lara had instructions to either kill him or let him die of starvation if the Government did not change its policy on ETA prisoners. Ortega Lara was kept in a cramped and humid underground cell in a warehouse on a river bank. Upon release, he was found to have lost 50 pounds and was suffering from malnutrition, muscle waste, and impaired vision.

Hours before Ortega Lara was rescued, Cosme Delclaux Zubiria, a lawyer and son of a wealthy Basque businessman, was found tied to a tree near Elorrio following an anonymous call to a regional Basque newspaper. Taken hostage by ETA for ransom on November 11, 1996, from his place of work in Zamudio, Vizcaya, his kidnaping coincided with a renewed campaign by ETA to raise funds through the so-called "revolutionary tax." He was set free on July 1 by ETA after 232 days in captivity. His family paid a ransom of \$6.7 million and promised to pay an additional \$3.35 million after his release.

On July 10 ETA kidnaped Miguel Angel Blanco Garrido, a local town councilor for the ruling Popular Party in Ermua. ETA issued a statement threatening to execute the 29-year-old man unless the Government met its demands to relocate some 500 ETA prisoners near their homes. Blanco was shot on July 12 and died in a hospital the next day (see Section 1.a.).

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits such acts. Nonetheless, suspects charged with terrorism assert that they have been abused during detention, and similar charges are sometimes made by other detainees.

On November 20, the United Nations Committee Against Torture released a series of recommendations regarding the problem of torture in Spain. The report pointed to documented cases of torture that reached the courts and that in some instances took up to 15 years to be resolved. Among other criticisms were the inability of prisoners held incommunicado to choose their own attorney and concern over complaints lodged throughout the year of xenophobia and racism against immigrants.

Nongovernmental organizations and the media also continue to accuse the security forces of occasional human rights abuses and brutality. Amnesty International (AI) expressed concern in 1996 over "numerous reports...of ill-treatment and even torture inflicted on persons suspected of acts of terrorism by members of the security forces." AI said that investigations into such allegations were "not always systematically carried out by the public authorities" and that members of the security forces found guilty of torture or mistreatment and sentenced to imprisonment were "often pardoned or released early, or simply do not serve the sentence." AI recommended that the Government "establish transparent and equitable procedures for conducting independent investigations into complaints of ill-treatment and torture" and urged the prosecution and appropriate punishment of officials found to have committed such acts. It also suggested that comprehensive human rights training be provided to law enforcement and prison officers.

According to a 1996 study completed by the Spanish Association Against Torture (AAT), there were 271 accusations of torture in 1995 (latest available statistics). The report, published yearly, reflects statistics from the previous year.

On March 11, captured terrorist Fernando Elejalde Tapia was taken into custody by three officers of the National Police immediately after the fatal shooting of a prison psychologist in the Basque region. He was held under the provisions of antiterrorist legislation. Two days later he received medical attention for a perforated eardrum, four broken vertebrae, bruises all over his body, blackened eyes, a kidney malfunction, and semiconsciousness. An inquiry by the Interior Ministry concluded that, contrary to Elejalde's claim, no torture or mistreatment took place while he was under police supervision and that his injuries were a result of the circumstances of the arrest. While fleeing pursuing officers, Elejalde was struck by a car, and he offered fierce resistance when they caught up with him. The Minister of Interior accepted the resignation of the provincial governor and dismissed the San Sebastian police chief over their failure to inform the Government of Elejalde's severe injuries and to ensure that he received medical attention sooner. The Minister of Interior maintained afterwards that there was "no torture nor

abuse here...." The Basque Nationalist Party (PNV) and the United Left Party (IU) complained that Elejalde was forced to make declarations under extreme pain. In January 1998 a judge ruled that Elejalde had not been tortured by the police.

On November 8, 1996, a protected witness in the investigation of GAL crimes claimed that he was abducted from a gas station and taken to a beach where he was handcuffed and beaten severely. He claims to have suffered repeated cigarette burns, sodomization, and death threats to his family. A copy of the judge's order requesting that he be given extra protection was forced into his mouth. A medical examination confirmed that his injuries were consistent with the allegations of torture, including 22 cigarette burns and lacerations in the rectal area. The victim identified one of his abusers as wearing special black latex gloves that are issued to the special forces. This information generated an inquiry, and the Minister of the Interior later admitted that there had been insufficient measures of security recognizing a "collective failure of the state of law" but denied that the assault was a result of negligence. This incident coincided with other reports of verbal threats and assaults against other witnesses, jurists, and lawyers involved in the different inquiries into the operations of GAL. Amnesty International, in a March report, expressed concern at the failure to protect witnesses in the GAL investigation and urged the Government to guard important witnesses.

In September AI expressed concern over allegations of police brutality against 17-year-old Ivan Gonzalez Polanco. According to testimony, Ivan was riding his motorcycle around the center of Badajoz on January 15 when a police officer signaled him to stop. When he gradually slowed to a stop in the officer's direction, he was rebuked for not stopping immediately and shoved to the ground. After an argument, he was allegedly beaten and his nose broken. Requests by the family of the victim that the officers involved take a breathalyzer test and to lodge a formal complaint were denied. The family was obliged to wait and make the complaint in court on January 17. By this time the police officer had filed his own complaint against the victim.

In November a court in Vizcaya sentenced three members of the Civil Guard to 4 years in prison and 6 years of "inhabilitacion especial" (a ban on any public sector employment) for their participation in the torture of Kepa Urrea Guridi. The court absolved three other members of the Civil Guard. The torture was committed in the victim's home on January 29, 1992, while Urrea was detained on charges of collaborating with ETA. Urrea was found guilty on March 25, 1996, along with several other ETA members, for his role in the 1992 death of National Police officer Jose Ansean.

In December 1996 a Barcelona court acquitted members of the Civil Guard of the torture and murder of a detainee, Jorge Xurigue, in 1994. The officers claim that the detainee attempted to escape and had to be subdued. The victim died of a cerebral hemorrhage following a blow to the temple. The provincial court found that the two officers kicked and beat the victim while he was on the ground. However, the court was unable to identify with certainty which of the two officers delivered the fatal blow. The court acquitted both defendants of the charges of murder, homicide, falsifying an official document, and torture. In 1997 the plaintiffs appealed the case to the Supreme Court.

In March a Madrid court sentenced four officers of the National Police to 3 months' imprisonment and 1 year's suspension from duty for torturing Enrique Erreguerena in 1982. Erreguerena is to receive \$7,000 compensation. The officers were acquitted of illegally detaining him and denying him his rights. Erreguerena, who was suspected of ETA-related crimes, was held incommunicado for 10 days under the antiterrorist legislation in force since 1982. Upon appearing in court, the judge ordered immediate medical attention for him. He later complained that he had been beaten, plunged in a bath until near the point of drowning, and given electric shocks to his penis. In 1986 the then director of state security refused to provide information requested by the magistrate investigating the case. In 1993, some 11 years after the events, six officers were charged with torturing Erreguerena. However, the trial was

postponed several times for a variety of reasons, including the holiday leave of one of the accused.

In April the provincial court in Vizcaya acquitted eight National Police officers on 1987 charges of torturing two men suspected of ETA crimes. Both men suffered lesions on their bodies. The officers claimed that the injuries resulted when the men attempted to flee and that they had acted appropriately and used reasonable force.

In April the Federal Union of Police (UFP) and the Unified Union of Police (SUP) submitted a complaint to the Audiencia provincial court protesting its decision in a March 1993 case. The court had sentenced two agents and one inspector for the beating of two Peruvian immigrants to 5 weekends of house arrest and 1 1/2 years in jail respectively. The UFP that claims the verdict only reflected the immigrant's version and excluded the testimony of the agents and other witnesses.

There was no apparent progress in the case of four policemen charged with the rape of a Brazilian tourist in March 1996. Nor was there progress in the trial of 14 Civil Guards of the Colmenar Viejo barracks accused of torturing 3 youths in 1994 following their arrest after a violent confrontation in a bar. The judicial investigation of allegations of torture in the case of several persons arrested in 1992 and accused of collaboration with ETA dragged on at year's end.

Prison conditions generally meet minimum international standards. The Council of Europe's Committee for the Prevention of Torture (CPT) made formal visits to inspect prisons in 1991 and 1994, and an ad hoc visit in June 1994. In March 1996, after a long delay, the Government finally agreed to the 1997 publication of the CPT's reports on its visits along with the Government's response. The CPT reports expressed concern over the continued use in the last 5 years of less severe methods of mistreatment, such as "punches, kicks, blows, and verbal insults."

The public defender in his 1997 report found only four cases in 1996 of mistreatment in prisons. He noted the rise of drug addiction and AIDS in the prison population and the need for implementing better rehabilitation programs.

Allegations of mistreatment of ETA prisoners arose after the suicide deaths of three individuals associated with ETA (see Section 1.a.).

On December 8, the Minister of Interior agreed to move 15 convicted ETA criminals dispersed throughout various prisons to prisons located in or near the Basque region. This move was consistent with the new prison policy agreed to by the Minister of Interior and delegates from the Basque parliament human rights committee on November 20. The new policy is to be carried out on a case-by-case basis and only upon the denunciation of ETA terrorism by each potential prisoner to be transferred.

The same Basque committee sent a delegation of four of its members in February to visit ETA prisoner Juan Lorenzo Lasa Mitxelena. He had been detained in France in 1985, was later extradited to Spain, where he was accused of six murders, tried, and sentenced to more than 200 years' imprisonment. The committee's delegation called on Mitxelena in his capacity as spokesperson for ETA prisoners to present a plan approved by the committee calling on the Government to transfer 826 Basque prisoners, about 550 ETA prisoners, to 14 prisons situated within a 300 kilometer radius of the Basque country. The committee's plan was rejected by Mitxelena as insufficient. Mitxelena insisted that ETA wants all of its prisoners brought to the four prisons in the Basque country and Navarre.

In September the U.N. Human Rights Commission (UNHRC) rejected all the proceedings initiated by those close to ETA against the Government's dispersion of ETA prisoners to jails outside the Basque

country. The Commission specifically rejected two complaints against the order to imprison Jon (a member of HB) and one action presented by a nongovernmental organization, the Association for the Prevention of Torture, against the policy of dispersion of ETA prisoners. Carlos Iturgaiz, the President of the Popular Party in the Basque country, reacted to the U.N. Commission's decision by encouraging the political parties that had lodged complaints about the Government's prison policy to "withdraw any action against the Spanish government."

The Government permits visits by human rights monitors, including the European Committee for the Prevention of Torture.

d. Arbitrary Arrest, Detention, or Exile

The Constitution prohibits arbitrary arrest and detention, and the authorities respect these provisions in practice.

A suspect may not be held more than 72 hours without a hearing except in cases involving terrorism. The Penal Code permits holding a suspected terrorist an additional 2 days without a hearing, as well as the possibility of incommunicado detention for such persons, provided that a judge authorizes such action. Many requests for extensions and incommunicado detention contain only the minimal necessary details. The U.N. Committee Against Torture and AI, in its 1997 report, expressed concern over incommunicado detention and the suspension of procedural rights, such as the initial denial of selection of free legal counsel that antiterrorist legislation permits.

The law on aliens permits detention of a person for up to 40 days prior to deportation but specifies that it must not take place in a prisonlike setting.

The Constitution prohibits exile, and the Government respects this provision in practice.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the judiciary is independent in practice.

A group of opposition political parties plans to accuse the Government of unwarranted interference in the judiciary before a European Union tribunal. The charge stems from perceived government avoidance of proper procedures in the appointment of prosecutors.

The judicial structure consists of territorial, provincial, regional, and municipal courts with the Supreme Court at its apex. The Constitutional Court protects constitutional rights, but there is no clear distinction between its jurisdiction and that of the Supreme Court on some issues, nor is it clear which has ultimate authority. A National High Court handles cases involving crimes such as terrorism and drug trafficking. The European Court of Human Rights is the final arbiter in cases concerning human rights.

A nine-person jury system was established in 1995, and the first cases were tried in 1996. In June the verdict in a jury trial was annulled for the first time. The Catalan superior court of justice ordered a retrial after discovering that a magistrate had committed irregularities that ultimately affected the final outcome.

The entire Penal Code was revised in 1996. Changes included the restructuring of the criminal justice

system, the introduction of modern offenses and white-collar crimes, an increase in the penalties for fraud offenses, a rise in the legal age at which an individual may be tried for a criminal offense from 16 to 18 years, the establishment of other new offenses (including domestic violence and sexual harassment), and the authorization of judges to fine individuals with reference to their wealth. The new code also allows judges more flexibility in sentencing. It eliminates the longstanding tradition of granting credits toward early release for good behavior. The maximum penalty for any one offense under the new code is 25 years, and the maximum time a person can continuously serve is 30 years, regardless of the cumulative total of sentences. Judges can now deport foreigners sentenced to 6 years or less.

The Constitution provides for the right to a fair public trial, and the authorities respect this right in practice. Defendants have the right to be represented by an attorney (at state expense for the indigent). They are released on bail unless the court has some reason to believe that they may flee or be a threat to public safety. The law calls for an expeditious judicial hearing following arrest. However, the Association of Victims of Terrorism and others have protested delays in the judicial process. By law suspects may not be confined for more than 2 years before being brought to trial, unless a further delay is authorized by a judge, who may extend pretrial custody to 4 years.

In practice pretrial custody is usually less than 1 year; however, criticism is heard in legal circles that some judges use "preventive custody" as a form of anticipatory sentencing. In cases of petty crime, suspects released on bail sometimes wait up to 5 years for trial. It is estimated that 25.8 percent of the prison population is awaiting trial.

Following conviction, defendants may appeal to the next higher court. Human rights groups such as the Association Against Torture and members of the press complain that many persons convicted of human rights offenses have avoided judicial sentencing by prolonging the appeals process and that their sentences are unduly light. According to Amnesty International, custodial sentences of less than 1 year and 1 day are customarily not served in such cases.

In January the European Court of Human Rights issued its judgment in the December 1996 case of *Scott v. Spain*. The plaintiff, a British citizen, was arrested on March 5, 1990, on suspicion of raping a Finnish woman in Puerto de la Cruz, Tenerife. He was kept in detention for over 4 years in connection with the rape charges and with a request for extradition. The court awarded the plaintiff legal costs and expenses.

In June two Moroccans were acquitted on charges of rape. The judge ruled that DNA samples taken from the victims did not match either of the accused. Both maintained their innocence from the beginning and participated in several hunger strikes during their 5-year stay in prison.

There were no reports of political prisoners.

f. Arbitrary Interference With Privacy, Family, Home, or Correspondence

The Constitution provides for the privacy of the home and correspondence. Under the Criminal Code, government authorities must obtain court approval before searching private property, wiretapping, or interfering with private correspondence. The present antiterrorist law gives discretionary authority to the Minister of Interior to act prior to obtaining court approval in "cases of emergency."

Investigation continues into allegations of wiretapping by the National Intelligence Agency (CESID) of private telephone conversations made by the King, various ministers, and other prominent figures between 1980 and 1991. The Minister of Defense, the Vice President, and CESID's chief resigned in

1995, after related government documents were leaked to the press. A judge closed the case in February 1996. However, in May 1996, a provincial court revoked that decision and ordered the judge to reopen the case. Investigations continued throughout the year.

CESID has also been linked to the investigations of GAL crimes. A judge in one GAL investigation found lists of CESID documents relating to GAL in the prison cell of the former director of operations of CESID, which were subsequently leaked to the press. Based on the lists, the judge requested 16 official secret documents from CESID, which allegedly contain information about GAL crimes. The Government declassified and released 13 of the documents; the investigation continues.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press, and the Government respects these provisions in practice. Opposition viewpoints, both from political parties and nonpartisan organizations, are freely aired and widely reflected in the media.

In September a bullfighting fan was fined \$1,400 for calling the commissioner of the bullfight "tonto" (dumb) during a bullfight and for doing it in the presence of a large crowd that included King Juan Carlos. The year before the same fan was fined \$270 for a similar outburst.

Academic freedom is respected.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for these rights, and the Government respects them in practice.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government respects this right in practice. The Government treats various religions in different ways. Catholicism is the predominant religion and enjoys the closest official relationship as well as the most benefits. Jews, Muslims, and Protestants (the latter a confederation of many faiths) also have official status but enjoy fewer privileges. These religions have bilateral agreements with the Government. Other recognized religions, such as Jehovah's Witnesses and Mormons, are covered by constitutional protections but have no special agreements with the Government. Religions not officially recognized, such as the Church of Scientology, are treated as cultural associations. There are over 15,000 Jews and 300,000 Muslims in Spain, although most of the latter are transient and dispersed. Religion courses are offered in public schools but are not mandatory.

In September the Government approved \$570,000 for the Catholic Church and another \$100,700 for the Protestant Evangelical Council. The President announced that efforts were made during the year to open talks with the Jewish and Muslim communities so that they might be eligible for funding in the next fiscal year. The Jewish and Protestant groups refuse funding; the Muslims are not eligible at present.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

Citizens are free to travel within and outside the country, to emigrate, and to repatriate. The Government respects these rights in practice.

The Government cooperates with the U.N. High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees. A recent asylum law (passed in 1994 and modified in 1995) brought refugee and asylum cases together and gave full power to adjudicate them to the Office of Asylum and Refugees (OAR), a branch of the Ministry of the Interior, but also mandates that cases can be referred to the UNHCR for appeal. Asylum requests can be made only at the point of entry, and applicants are detained until the case is resolved. Negative rulings must be made within 72 hours, but the asylum seeker has an additional 24 hours in which to make an appeal. No provisions are made for detainees to have access to translators or lawyers. Since 1994 the revised law has caused a major drop in the numbers of both requests for, and grants of, asylum. During the first 6 months of 1996, only 110 of 1,638 applications for asylum were approved and an additional 98 humanitarian asylum applications were approved (latest available statistics). There were no instances of forcible repatriation of refugees during the year.

Spain continues to face a wave of illegal immigrants coming across the strait of Gibraltar. In September the Ombudsman called for the urgent creation of a committee to address immigration issues. It is estimated that more than 10,000 illegal immigrants were caught in 1996, the majority in Andalucia in southern Spain. Authorities say that under "normal" circumstances they intercept no more than 30 percent of those who enter through that zone. In response, the Government is resorting to a mix of tighter border controls, liberalized treatment for those who have already established themselves in society, and increased international coordination.

In March the police dismantled an illegal smuggling ring run by nine Polish citizens. In a single year of operation, the group was responsible for bringing in over 2,500 Polish women to work as domestic servants. Detained in connection with the ring were 9 men and 16 women.

In August and September there were several reports of accidental deaths involving Moroccan men attempting to enter Spain illegally. Criminal gangs have been implicated in the deaths; they run smuggling rings in which would-be immigrants are charged enormous fares and then packed into poorly ventilated and unsafe boats or containers to be brought into Spanish territory.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

Spain is a multiparty democracy with open elections in which all citizens 18 years of age and over have the right to vote by secret ballot for Parliament. Elections are held at least every 4 years. In the 1996 national elections, the Popular Party ended 14 years of Socialist government, and Jose Maria Aznar became Prime Minister.

Governmental power is shared between the central government and 17 regional "autonomous communities." Local nationalist parties give political expression to regional linguistic and cultural identities.

Women are increasing their participation in the political process. The number of female candidates increased in the 1996 national elections, but under the electoral system the percentage of votes won determines the number of candidates elected from the party list. Many women were placed in the lower half of the list. As a consequence of this electoral system, the number of women elected has never reached 25 percent. Women hold 19 percent of parliamentary seats. The 350-member Chamber of Deputies has 72 female representatives (22 percent of the total), and the 256-member Senate has 27 (10.4 percent of the total). The Ministers of Justice, Agriculture, Education and Culture, and Environment are women.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of nongovernmental human rights groups, including the Human Rights Association of Spain in Madrid and the Human Rights Institute of Catalonia in Barcelona, operate freely without government interference. The Government cooperates readily with international organizations investigating allegations of human rights abuses (such as the European Commission of Human Rights) and international nongovernmental human rights groups, as well as with independent national groups.

The Constitution provides for an Ombudsman, called the "People's Defender", who actively investigates complaints of human rights abuses by the authorities. The Ombudsman operates independently from any party or government ministry, must be elected every 5 years by a three-fifths majority of congress, and is immune from prosecution. He has complete access to government institutions and to documents not classified secret for national security reasons.

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The Constitution provides for equal rights for all citizens. The Office of the People's Defender received approximately 22,000 complaints in 1996 (latest information available). While the majority of the complaints pertained to education and social services, increases were registered in complaints of racism, domestic violence, and mistreatment by law enforcement agencies.

Women

Sexual abuse, violence, and harassment of women in the workplace continued to be problems. On December 19, the government spokesman urged victims of sexual and domestic abuse to report their cases and promised legislative reforms. His announcement and subsequent protests in Granada and Madrid were reactions to the death due to domestic violence of the 60th woman during the year. The deaths in 1997 total 5 less than in 1996, 15 more than in 1995, and 18 more than in 1994. In 1997 the mistreatment or threat of mistreatment of women was the subject of 18,860 complaints; in 1996 the comparable number was 16,738. Experts believe that only 10 percent of violent acts against women are reported to authorities. Some nongovernmental organizations (NGO's) estimate that about 600,000 to 800,000 cases of abuse occur each year. Almost 2,000 women were sheltered incognito during the year. In a 1996 study in which 1,800 women were interviewed, 15 percent admitted to having suffered some type of physical or sexual abuse.

During December there were several attempts on the lives of women by their husbands. In one particularly gruesome incident, on December 17 in Granada 60-year-old Ana Orantes was badly beaten, then doused with gasoline and set on fire by her 61-year-old ex-husband, Jose Parejo. On December 4 she had appeared on a television talk show and testified to 20 years of domestic abuse by her husband. On December 19, a 30-year-old man attempted to run over his 21-year-old wife, who was carrying their small child into a day care center when he drove toward them in the ambulance that he drove for a private ambulance company. The wife and child found refuge inside the day care center, at which point the husband unsuccessfully attempted to break into the building. On December 19, Madrid police officials discovered the body of Olga Santos inside the store she owned. Santos died from multiple stab wounds inflicted by her ex-boyfriend, who then committed suicide. That same day in Isla Cristina (Huelva), 42-year-old Rafael Faneca attempted to set fire to his home with his wife and two young children inside.

Various women's organizations urge reform of the Penal Code to include tougher punishment for the

perpetrators of domestic abuse and crime. The Federation of Separated and Divorced Women is pushing for modifications in the Penal Code to make the issuance of a restraining order automatic upon the filing of a complaint. The Commission for the Investigation of Mistreatment Against Women urges changing the classification of these crimes from a petty offense to a misdemeanor ("falta" to "delito") and wants complaints of abuse to be followed up by a quick and thorough judicial and police investigation. According to the Commission, the failure to promptly investigate a complaint, which they believe frequently, results in the loss of important evidence. The Commission reported 724 domestic violence-related deaths and 500 attempted murders in the last 13 years. However, between 1989 and 1994, only 33 cases have resulted in convictions. The President of the Association for Women, which also advocates reforming the Penal Code, believes that prisons "do not have sufficient capacity to hold such individuals in custody."

Several levels of government provide assistance to battered women. A toll-free hot line advises women where to go for government shelter or other aid if mistreated. There are 54 official centers for mistreated women. The Government also runs educational programs seeking to change public attitudes that contribute to violence against women. The Women's Institute has charged that some judges are reluctant to get involved in cases of violence against women by members of their family. Similarly, in smaller towns some police officers have been reluctant to accept complaints from battered women. Recognizing the latter problem, the Ministry of the Interior initiated a program in 1986 that created special sections in most police departments to deal with violence against women, staffed by trained female officers.

A 1989 law prohibits sexual harassment in the workplace, but very few cases have been brought to trial under this law.

In recent years, women have moved towards equality under the law, and larger numbers of women are in the educational system and work force. According to the organization Active Population, women received 57 percent of university degrees in 1996 (latest information available). The Minister of Social Affairs reports that women constitute 43 percent of the work force. However, according to the Taxation Agency (Agencia Tributaria) in its 1997 report "Employment, Salaries and Pensions" completed by the Institute of Fiscal Studies, women only occupy 18 percent of better paying positions. Women outnumber men in the legal, journalistic, and health care professions but still play minor roles in many fields.

The law mandates equal pay for equal work. However, according to a 1997 report by the Economic and Social Affairs Council, women's salaries remain 27 percent lower than those of their male counterparts. The Council asserts that women are more likely to have temporary contracts or part-time employment than men. The National Association of Rural Women and Families (ANFAR) reported in 1995 that 80 percent of rural women are not formally employed but instead aid their husbands in farming or fishing. ANFAR said that these women lack titles to family enterprises and do not receive the same social security benefits as the male head of household. In 1997 the community of Madrid increased funding for women's organizations after cutting funding by 9 percent in 1996, which resulted in paralyzing more than 1,000 women's programs.

Children

The Government demonstrates its commitment to children's welfare through well-funded and easily accessed programs of education and health care. Education is compulsory until age 16 and free until age 18. The Constitution obligates both the state and parents to protect children, whether or not born in wedlock. The Ministries of Health and Social Affairs are responsible for the welfare of children and have created numerous programs to aid needy children. Numerous NGO's exist to further children's rights. For example, the school help program for the protection of children has a team of experts who work with educators to help them identify abused or abandoned children in the classroom.

The 1995 Law of the Child gives legal rights of testimony to minors in child abuse cases; it also obliges all citizens to act on cases of suspected child abuse and, for the first time, sets up rules regarding foreign adoptions.

Under the new Penal Code, children under the age of 18 are not considered responsible for their actions and cannot be sent to prison. The seriousness of the violent acts in the Basque country by separatist youths, however, has led to accelerated negotiations between the central Government and the Basque government for the punishment of youthful offenders under the age of 18. The Attorney General's 1996 report highlighted a 300 percent increase in youth vandalism in the Basque country since 1994 (latest statistic available). Public debate centered on whether the age of responsibility should be set as low as 12 years. However, following negotiations with opposition parties, the Government announced agreement in October on draft legislation that does not lower the age of responsibility.

A 1996 penitentiary law lowers the age that a child can remain with an incarcerated mother from 6 to 3 years of age. It also provides a special unit for mothers with children, a kindergarten, psychological support, and ways for children to get out of prison regularly. At present it is estimated that 200 children live in jail with their mothers under this law.

People With Disabilities

The Constitution obliges the State to provide for the adequate treatment and care of people with disabilities, ensuring that they are not deprived of basic rights that apply to all citizens. Since 1982 a law on the integration of disabled citizens has been in effect, which aims to ensure fair access to public employment, prevent disability, and facilitate physical accessibility to public facilities and transportation. The national law serves as a guide for regional laws; however, levels of assistance and accessibility differ from region to region and have not improved in many areas.

The 1996 Penal Code continues to allow parents or legal representatives of a mentally disabled person to petition a judge to obtain permission for the sterilization of that person. In 1994 the Constitutional Court held that sterilization of the mentally infirm does not constitute a violation of the Constitution. In practice many courts have authorized such surgery. Religious groups continue to protest this ruling.

In October the National Confederation for the Deaf filed a discrimination complaint against the Government for not officially recognizing sign language.

National/Racial/Ethnic Minorities

Roma, who make up 2.5 percent of the population, continue to suffer discrimination in housing, schools, and jobs. Since 1991 the Madrid city government, in cooperation with the autonomous regional government, has been carrying out a program to relocate squatters (the great majority of whom are Roma) to housing projects in the region. A University of Navarra study estimated that 12,000 squatters live in camps on the margins of Madrid, although the Madrid public works councilor states that there never been a reliable census of squatters. The daily El Pais reported in 1996 that 16 prefabricated houses exist around Madrid for the squatters ("chabolistas"), with 140 more houses planned. The city government plans to relocate 449 of the 769 families of squatters in and around Madrid by 1998. Spain's largest Romani organization, Gypsy Presence, complains that the city has put up police checkpoints and fences that make Romani communities resemble prison camps. The group's complaint that such relocation areas lack basic services is supported by NGO's and the press. The city government denies any anti-Romani bias in its actions. Thirty-one illegal families destroyed their "houses" in 1996 so that they would not be counted in the census and forced to relocate.

A language or dialect other than Castilian Spanish is used in 6 of the 17 autonomous communities. The Constitution stipulates that citizens have "the duty to know" Castilian, which is the "official language of the state," but it adds that other languages can also be official under regional statutes and that the "different language variations of Spain are a cultural heritage which shall...be protected." Catalonia has passed a law whereby Catalan is taught in regional schools and used at official regional functions. Suits regarding specific applications of this law are pending in various courts. Both Galicia and Valencia have laws stating the duty to "promote" their regional languages in schools and at official functions.

In Bilbao 21 parents filed complaints against several summer camp counselors in August for punishing students because they spoke Castilian and not Euskera (the Basque language) in the classroom. The punishments included carrying a backpack filled with rocks and wearing a sign stating, "I am in favor of Castilian." The children were participants in an educational program designed to expand knowledge of Basque language and Basque culture.

In 1995 Congress modified the Penal Code to make it a crime to "incite, publicize, or otherwise promote the abuse or discrimination of people or groups because of race, ethnicity, nationality, ideology, or religious beliefs." No cases have been tried under the modified Penal Code.

Human rights groups and the media continued to give increasing attention to discrimination against the growing numbers of illegal immigrants from northern and sub-Saharan Africa. Foreign nationals of African and Latin American origin complain of discrimination and abuse by authorities and, more frequently, by ordinary citizens. According to a 1996 study by the Youth Institute in the Ministry of Labor and Social Affairs, 91 percent of persons under the age of 29 would like to see immigration further restricted. Although only 1.3 percent of the population is foreign born, and the Government reduced the number of work permits issued to foreigners by 10 percent in 1995, 60 percent of the respondents under 29 years old in the same survey said that they believed that immigrants caused employment problems for them. The Association of Moroccan Immigrant Laborers has offices in Madrid, Barcelona, and Seville to combat anti-Moroccan racism.

In February the National High Court ruled that no constitutional violations had taken place when a 53-year-old black Spanish citizen was stopped for questioning based on the color of her skin. The woman had been stopped by two police officers at a train station in December 1992. She was traveling with her son and husband, both Caucasian. They were not interrogated. The police officer justified her detention on the grounds that many people of color are illegal immigrants.

Quasi-organized rightwing youth groups (called "skinheads" by the press) continued to commit violent acts throughout the year, terrorizing minorities, and in some instances, committing murder. National police estimate the total number of skinheads to be several thousand; however, they say that the skinheads are not organized to plan specific actions. The organization SOS Racismo stated that race-related violence increased in 1996 as a result of reductions in police arrests and incarcerations of skinheads.

Section 6 Worker Rights

a. The Right of Association

All workers, except those in the military services, judges, magistrates, and prosecutors, are entitled to form or join unions of their own choosing. All that is required to organize a trade union is that more than two workers register with the Minister of Labor and Social Security. Over 200 trade unions are registered and 1 is not legally registered (because the Constitutional Court ruled that it was ineligible,

since it represents military personnel).

Under the Constitution, trade unions are free to choose their representatives, determine their policies, represent their members' interests, and strike. They are not restricted or harassed by the Government and are independent of political parties. A strike in nonessential services is legal if its sponsors give 5 days' notice. Any striking union must respect minimum service requirements negotiated with the respective employer. The right to strike has been interpreted by the Constitutional Court to include general strikes called to protest government policy. In 1996 the Labor Ministry reported 830 strikes, in which 1,078,000 workers participated, compared with 883 strikes by 569,000 workers for the same period the previous year (latest available statistics).

Unions are free to form or join federations and affiliate with international bodies and do so without hindrance.

b. The Right to Organize and Bargain Collectively

A 1980 statute undergirds the right to organize and bargain collectively. Trade union and collective bargaining rights were extended in 1986 to all workers in the public sector, except military personnel. Public sector collective bargaining in 1990 was broadened to include salaries and employment levels, but the Government retained the right to set these if negotiations failed. Collective bargaining agreements are widespread in both the public and private sectors; in the latter they cover 60 percent of workers, notwithstanding that only about 15 percent of workers are actually union members.

The law prohibits discrimination by employers against trade union members and organizers. Discrimination cases have priority in the labor courts. Legislation in 1990 gave unions a role in controlling temporary work contracts to prevent their abuse and in termination actions. Nonetheless, unions contend that employers discriminate in many cases by refusing to renew temporary contracts of workers engaging in union organizing. More than one-third of all employees are under temporary contracts, and the number is growing.

Labor regulations and practices in free trade zones and export processing zones are the same as in the rest of the country. Union membership in these zones is reportedly higher than the average throughout the country.

c. Prohibition of Forced or Compulsory Labor

Forced or compulsory labor, including that performed by children, is outlawed and is not practiced. The legislation is effectively enforced.

d. Status of Child Labor Practices and Minimum Age for Employment

The Government prohibits forced and bonded child labor and enforces this prohibition effectively (see Section 6.c.). The statutory minimum age for the employment of children is 16 years. The Ministry of Labor and Social Security is primarily responsible for enforcement. The minimum age is effectively enforced in major industries and in the service sector. It is more difficult to control on small farms and in family-owned businesses. Legislation prohibiting child labor is effectively enforced in the special economic zones. The law also prohibits the employment of persons under the age of 18 at night, for overtime work, or in sectors considered hazardous.

e. Acceptable Conditions of Work

The legal minimum wage for workers over 18 years of age is considered sufficient for a decent standard of living. The daily national minimum wage rate in 1997 was \$14.06 (2,221 pesetas); for those 16 and 17 years of age it was \$13.88 (1,971 pesetas). These rates are revised every year in line with the consumer price index and are effectively enforced by the Ministry of Labor and Social Security. The law sets a 40-hour workweek with an unbroken rest period of 36 hours after each 40 hours worked. Workers enjoy 12 paid holidays a year and a month's paid vacation.

Government mechanisms exist for enforcing working conditions and occupational health and safety rules, but bureaucratic procedures are cumbersome and inefficient. Safety and health legislation is being revised to conform to European union (EU) directives. The Law to Prevent Labor Risks was passed in 1995 by Parliament as the foundation for the completion of the rest of the EU directives.

The National Institute of Safety and Health in the Ministry of Labor and Social Security has technical responsibility for developing labor standards, but the Inspectorate of Labor has responsibility for enforcing the legislation through judicial action when infractions are found. Workers have legal protection for filing complaints about hazardous conditions.

In November thousands of union members held protests in most major cities to demand the enforcement and strict application of laws mandating safe work conditions. The process of applying the laws has been slow and difficult. During the first 6 months of the year there were 514 work-related deaths.

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